

PROPOSED ISSUE FOR COMMENT #3: TAX OFFENSES THAT IMPLICATE PRIVACY INTERESTS

Synopsis: In the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105–206, Congress created two new tax offenses pertaining to the unlawful disclosure of tax information and to unlawful requests for tax audits. In the Taxpayer Browsing Protection Act, Pub. L. 105–35, Congress created another tax offense pertaining to the unlawful inspection of tax information. The Commission’s decision as to whether and/or how to treat those new offenses also raises the issue, discussed below, of whether and/or how to treat similar tax offenses that are not currently referenced in the Guidelines Manual.

The Internal Revenue Service Restructuring and Reform Act of 1998 created an offense, at 26 U.S.C. § 7217, that makes it unlawful for the President, Vice President, anyone employed in their executive offices, or certain other high-ranking officials of the executive branch to request the Internal Revenue Service to conduct or terminate an audit or other investigation of the tax liability of any person. The maximum term of imprisonment is 5 years.

The Act also amended 26 U.S.C. § 7213, which makes it unlawful for federal and state employees and certain other persons to disclose tax return information. The Act amended § 7213 to also make it unlawful to disclose tax-related computer software. The maximum term of imprisonment for such offenses is 5 years. (Currently 26 U.S.C. § 7213 is not listed in the Statutory Index.)

The Taxpayer Browsing Protection Act created an offense at 26 U.S.C. § 7213A that makes it unlawful for federal and state employees and certain other persons to inspect tax return information in any way other than that authorized under the Internal Revenue Code. The maximum term of imprisonment for such offenses is one year.

These new provisions are similar in nature to another tax offense (currently not listed in the Statutory Index) at 26 U.S.C. § 7216, which makes it unlawful for persons who are in the business of preparing tax returns to knowingly or recklessly disclose any such information or to use any such information for any purpose other than the preparation of the tax return. The maximum term of imprisonment for such offenses is one year.

If the Commission were to decide to explicitly address these offenses in the guidelines, one approach may be to rework the guideline pertaining to the interception of communications or eavesdropping, §2H3.1. Arguably all of the offenses described above implicate the privacy interests of the taxpayer whose tax information was the subject of the offense. An alternative approach would be to create a new guideline dealing with the invasion of privacy with respect to the audit, inspection, or disclosure of tax information. (Of course, the Commission can always choose not to explicitly address these offenses in the guidelines, which is the current approach with respect to violations of 26 U.S.C. §§ 7213 and 7216.) The following is a proposed issue for comment with respect to these offenses.

Proposed Issue for Comment:

The Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105–206, created an offense, at 26 U.S.C. § 7217, that makes it unlawful for the President, Vice President, anyone employed in their executive offices, or certain other high-ranking officials of the executive branch to request the Internal Revenue Service to conduct or terminate an audit or other investigation of the tax liability of any person. The maximum term of imprisonment is 5 years.

The Act also amended 26 U.S.C. § 7213, which makes it unlawful for federal and state employees and certain other persons to disclose tax return information. The Act amended § 7213 to also make it unlawful to disclose tax-related computer software. The maximum term of imprisonment for such offenses is 5 years.

The Taxpayer Browsing Protection Act, Pub. L. 105–35, created an offense at 26 U.S.C. § 7213A that makes it unlawful for federal and state employees and certain other persons to inspect tax return information in any way other than that authorized under the Internal Revenue Code. The maximum term of imprisonment for such offenses is one year.

These new provisions are similar in nature to another tax offense at 26 U.S.C. § 7216, which makes it unlawful for persons who are in the business of preparing tax returns to knowingly or recklessly disclose any such information or to use any such information for any purpose other than the preparation of the tax return. The maximum term of imprisonment for such offenses is one year.

The Commission invites comment on whether and/or how the sentencing guidelines might be amended to address violations of 26 U.S.C. §§ 7213, 7213A, 7216, and 7217. One approach may be to rework the guideline pertaining to the interception of communications or eavesdropping, §2H3.1, because arguably all of the offenses described above implicate the privacy interests of the taxpayer whose tax information was the subject of the offense. An alternative approach would be to create a new guideline dealing with the invasion of privacy with respect to the audit, inspection, or disclosure of tax information. Are there other approaches that might be appropriate to address these offenses?

[Note: A vote on this is a vote on whether to publish the issue in the Federal Register.]